

REMARKS

Claims 1-3, 7-11 and 17 remain pending as per entry of the Amendment /
Response to Restriction, mailed 01 December 2003.

Applicants herein again elect Group I claims in response to the Restriction Requirement. In addition, Application select the species V1Jns-GA-HA [see original claim 4(l)]. Applicant repeats the original group election, with comments, along with this species election

A Petition to Extend Time, under 35 U.S.C. §1.136(a), for one (1) month, as a large entity, is enclosed.

Response to Restriction Under 35 U.S.C. §121

The Examiner has set forth the following restriction requirement under 35 USC 121:

- I) Claims 1-11 and 17-18;
- II) Claims 12-15, 25;
- III) Claim 16;
- IV) Claims 19-22;
- V) Claim 23; and,
- VI) Claim 24.

Applicants elect Group I (claims 1-11, 17-18, allegedly “drawn to DNA construct, vaccine, and method for protecting against infection, classified in class 435, subclass 320.1 and class 514, subclass 44”), with traverse. Applicants elect a required species of V1Jns-GA-HA [see original claim 4(I)]. Again, Applicants make this species election, with traverse.

Applicants canceled claims 12-15 and 25 (Group II), claim 16 (Group III), claims 19-22 (Group IV), claim 23 (Group V) and claim 24 (Group VI) in the Amendment / Response to Restriction, mailed 01 December 2003. In addition, Group I claims were, and remain, elected (pending claims 1-3, 7-11 and 17). Claims 4-6 were cancelled and claims 1, 3, 9 and 11 were amended to recite a DNA construct, polynucleotide vaccine, and associated methods, which comprise a recited plasmid backbone as a portion of the DNA construct or polynucleotide vaccine. Applicants have elected a species (V1Jns-GA-HA). However, Applicants take the position that such species election is now moot. Pending claims 1-3, 7-11 and 17 traverse the basis for requirement for a species election, as no complete sequences are recited in the amended Group I. Instead, these claims recite various influenza genes inserted into a specific population of plasmid backbones, which as enabled throughout the specification, promote *in vivo* immune responses upon vertebrate administration. Applicants respectfully take the position that no search burden exists for examination of Group I claims as currently amended.

Applicants again respectfully take the position that pending claims 1-3, 7-11 and 17 are now in proper form for examination. The Examiner is invited to contact the undersigned attorney if clarification is required on any aspect of this response, or if any of the claims are considered to require further amendment to be placed in condition for examination and allowance after entry of this Amendment.

Respectfully submitted,

Date: April 20, 2004

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